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Adding Insult to Injury: Automobile Accident Claims in New York City

By Carol A. Wood

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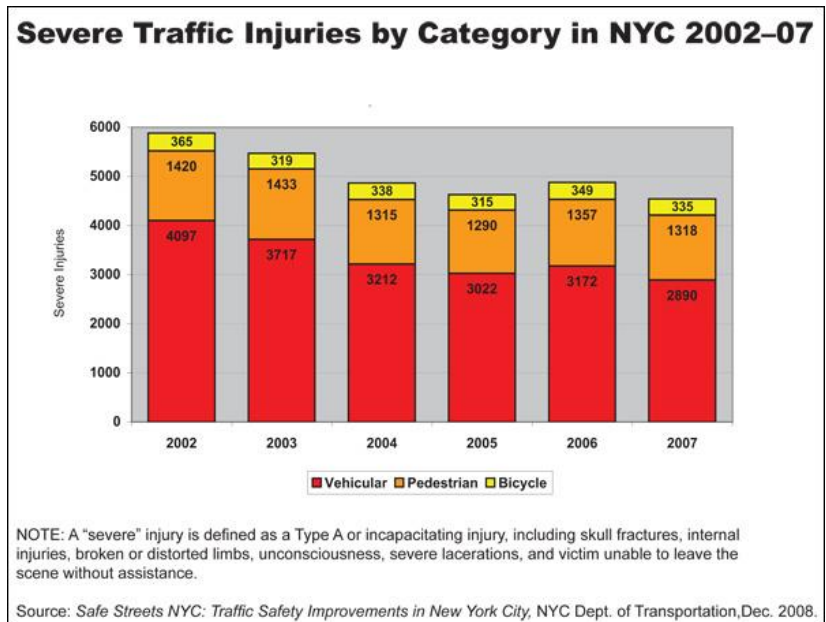
New York State insurance laws provide medical coverage for victims of car crashes regardless of fault or state of residence. Yet these laws are not publicized and are little known. This article examines the lack of official guidance on handling a crash and its aftermath, and the unnecessary financial loss and risk of harm it causes.

Crash victims report that this uncertainty compounds the chaos and pain of a crash, and makes access to medical benefits and to full recovery a matter of chance rather than policy. The article suggests that public officials take simple, inexpensive steps to address the problem, such as publishing information on medical, legal and insurance procedures that crash victims need. Officials can similarly educate the public at large about what to do, and not do, at any of the 78,000 crashes in the city each year, to further reduce potential harm.

Riding her bike home from a Brooklyn cafe on a hot June afternoon, Sarah Phillips carefully signaled and waited before turning onto Prospect Place. Next thing she knew, she was in an ambulance, both right shinbones fractured. “Wherever you’re taking me, it has to be cheap,” the panicked, uninsured art student told paramedics.

Dan Finton, an uninsured bookseller, had his leg broken by a hit-and-run driver on Eighth Avenue in Manhattan one Saturday night. He says he had no idea how he was going to pay his medical bills. He engaged a lawyer, who told him about a state insurance program for hit-and-run victims — but hospital administrators said they knew nothing about the program.

A woman who asked to be named only as “Deborah,” a 30-something consultant, was crossing the street on the Upper East Side when a livery cab backed over her to get a parking space. A crowd of people gathered, urging her not to move. At the hospital, Deborah was diagnosed with a head injury; she was unable to remember her relatives’ names, let alone navigate the insurance system. “Absolutely nobody explained these administrative things,” she says.



ABOUT EVERY SEVEN MINUTES, a car crash occurs in New York City that’s serious enough to be reported to the authorities. Although fatalities have begun to fall lately, the number of car crashes and injuries continues to rise, according to the state’s latest full-year data. More than 11,000 pedestrians were injured in 78,000 NYC car crashes in 2010, up 6.1 percent from the previous year, along with 3,500 bicyclists — up 25 percent. And while the number of severe injuries has fallen, nondrivers account for a higher percentage of them — 36 percent in 2007, up from 30 percent of in 2002. (The city’s Department of Transportation did not respond to several requests for more recent figures.)

Under two state insurance laws, all of these pedestrians and cyclists are entitled to medical benefits, paid by the driver’s insurer or an industry fund. But frequently, the victims don’t know about the laws. That’s because no government authority publicizes their existence. And insurance companies aren’t required to explain the laws’ provisions until the crash victim files a claim.

Increasingly in New York, both city and state governments are taking bold steps to improve the safety of public streets. City efforts to tame traffic began more than a decade ago — including redesigns along the notorious Queens Boulevard — and intensified in 2008 under a new DOT commissioner, Janette Sadik-Khan, with widened sidewalks and expanded bikeways, among other projects.

The trend gained steam in August 2011, when the state enacted a “complete streets” law that requires roadway planners to “consider the needs of all users...including pedestrians, bicyclists, public transportation riders, motorists and citizens of all ages and abilities, including children, the elderly and the disabled.”

From a public safety standpoint, these measures have begun to reduce casualties and promise greater benefits in the future. Yet legions of current crash victims remain neglected, and neither the state nor the city ensure that they receive the benefits they’re entitled to.

The state and city could begin to correct this problem simply by making basic information available. Even small changes — such as identifying and linking the state insurance laws on the 311 and 511 information portals — would help.

The laws are these:

- The “No-Fault Insurance Law” (NYIL 5101). Requires car owners to provide insurance coverage of at least \$25,000 per person for bodily injury expenses, or \$50,000 per crash, and \$10,000 in property damage.
- The “Motor Vehicle Accident Indemnification Act” (MVAIC [or EM-vayk]) (NYIL 5201). Provides medical benefits for victims of hit-and-run and uninsured drivers, and for other claimants denied or ignored by a driver’s No-Fault insurer. As “insurer of last resort,” this hard-to-pronounce and little-known program is funded by insurance carriers doing business in New York State.

Inadequate information

The city’s emergency medical system is highly responsive. A phone call to 911 leads quickly to the dispatch of an ambulance to a car crash site. Hospital emergency rooms are required by federal law to stabilize any patients in trauma, regardless of their ability to pay.

But once the emergency is over — or if an injury doesn't appear until later — the victim's financial and medical outcomes are largely a matter of luck and his or her own resources. To find out what resources are available, you have to dig deep, long and hard.

As of early October 2011, a reporter found virtually no information on the websites of various government agencies and the five major New York auto insurers.

New York City's front line of information, the 311 phone service, advises calling the 911 emergency line in case of a car crash. But its website and agents apparently don't have any suggestions for after the crash. Asked what to do in a hypothetical accident, to ensure one's legal rights and access to medical care, one 311 agent put a reporter on hold three times, then advised calling the NYC Bar Association's lawyer referral service and the NYS Unified Courts. The agent, though quick-thinking, clearly had to improvise. The lawyer referral service would be useful to many victims. But knowing about No-Fault and MVAIC medical benefits is arguably more important — whether a lawyer is hired or not.

A spokesperson for 311 could not confirm that such information wasn't available somewhere on the department's vast website. But he added, "To the extent that we can make the site more accessible, we want to do that."

Nor does any city website mention what to do in a car crash — not the NYPD, the Department of Transportation, or the Department of Health — apart from calling 911. By contrast, in tiny Waverly, Ill., with a population of 1,400,

Motor Vehicle Crashes in NYC 2008–10*				
Number of accidents reported	2008	2009	2010	% change 2008-10
Fatal	278	256	261	-6%
Nonfatal personal injury	51,346	51,234	53,609	4%
Reportable property damage	24,862	24,049	24,473	-2%
Total motor vehicle accidents	76,486	75,539	78,343	2%
Pedestrian/motor vehicle	10,973	10,715	11,266	3%
Bicycle/motor vehicle	3,010	2,933	3,667	22%
Fatalities reported				
Drivers killed	87	73	71	-18%
Passengers killed	30	25	32	7%
Pedestrians killed	151	158	149	-1%
Bicyclists killed	21	12	18	-14%
Total persons killed	289	268	270	-7%
Nonfatal injuries reported				
Drivers injured	36,037	36,011	37,456	4%
Passengers injured	22,197	22,545	24,673	11%
Pedestrians injured	10,722	10,443	11,084	3%
Bicyclists injured	2,871	2,809	3,518	23%
Other	557	561	522	-6%
Total persons injured	72,384	72,369	77,253	7%
* Based on accident reports from NYS DMV and NYPD.				
Source: NYS DMV Summary of NYC Motor Vehicle Accidents 2008, 2009, 2010, http://www.dmv.ny.gov/stats.htm (accessed 3/20/2012).				

emergency instructions are posted prominently on its website (and quickly located under Home/Information/Car Accident Procedures).

New York City, however, is not responsible for overseeing car insurance. The state Department of Financial Services (DFS, until last October the Department of Insurance, or DOI) is. As of mid-September 2011, the department's public website included only two hard-to-find mentions of the medical benefits available to pedestrians — buried in information for automobile owners. Additionally, their fractured phrasing makes them unlikely to surface on a Google search.

Searching the DFS site for “pedestrian” calls up a reference to a No-Fault FAQs page, which states that pedestrians should file a claim with the driver's insurer, a household insurer, or MVAIC. This is accurate, but the claimant must figure out how to actually make the claim, and in a way that protects their interests. More useful would be step-by-step directions that could be easily found on the Auto Insurance home page.

A DFS site search yields nothing for “bicyclist.” Bicyclists aren't named in the law but are covered by it, the department confirmed in an email.

Asked how injured New Yorkers are supposed to learn of the medical benefits, the DFS responded that consumers should refer to its No-Fault FAQs page on the Web or call its consumer services bureau's toll-free phone line on weekdays. The department noted that the driver's insurer must provide this information — once the injured party presents it with a claim.

And there's the Catch-22. Car crash victims must already know about the No-Fault and MVAIC programs in order to make a claim. But they must make a claim to be notified of the programs' benefits.

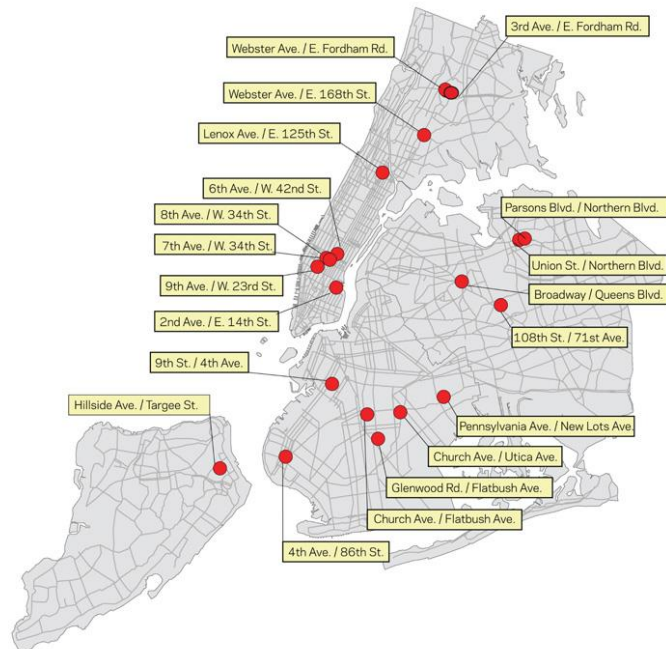
Also, hit-and-run victims must report their crash to the police within 24 hours in order to qualify for MVAIC benefits. But if they're struck on a Friday or Saturday night, and wait until Monday to phone the DFS for information, they'll have already missed the reporting deadline.

Nor do insurers offer much help. Of the five largest auto insurers in New York, representing more than 50 percent of market share, none explains on its site how to make a No-Fault claim against an insured driver's policy. Three require nonmembers to call an agent personally to make a claim; two allow claims to be submitted online, without explanation of the policies involved.

For the nonmember claimant, calling the insurer puts them at a legal disadvantage in discussing their case, especially if the caller has no other information about their rights under the No-Fault law.

Of the five insurers, only Geico describes No-Fault coverage on a glossary page. But it does so inaccurately, omitting mention of pedestrians and bicyclists. Progressive Group's glossary mentions that pedestrians are covered under "personal injury protection" — a little-known name for No-Fault, which many people might not think to check; the entry omits bicyclists as well. Allstate discusses bicyclists among its informative tip sheets for drivers, but it says nothing of their right to make a claim in a crash.

TOP 20 HIGH PEDESTRIAN CRASH LOCATION MAP—2008



Source: Adapted from *High Pedestrian Crash Locations: Pedestrian Safety Improvements at the Top 20 Crash Intersections: 2008*. New York City Department of Transportation, Summer 2011.

The No-Fault law specifically entitles pedestrians and cyclists to "first-party" benefits. Yet claimants are in essence denied this parity by insurers' strict control of information. Pointing to the inherent conflict, Scott Charnas, a plaintiff's personal injury attorney, says, "It's not in the insurer's interest to inform the public as much as possible of their rights."

The asymmetry puts New York City residents at a special disadvantage. An estimated 55 percent do not own automobiles, and often have little familiarity with the business.

Even if crash victims hire an attorney or possess unusual financial literacy they may not be able to penetrate the insurance system.

Laurie Cohen was in the crosswalk at Duane and Greenwich Streets when she felt a taxi hit her. She woke up as a good Samaritan was tying a tourniquet around her bleeding head and was taken by ambulance to the hospital with a head injury. But Cohen says her lawyer dropped her case when the

self-insured cab company ignored his calls. Her health insurer rejected her medical claims as well. Because Cohen, a seasoned investigative reporter for The Wall Street Journal, had never heard about the state programs, she had no inkling that she should look into them.

Given the effective information blackout, how do ordinary people find out about these benefits? Two people interviewed for this article said they were told by ambulance workers or hospital staff. But most say they got no help.

Police are required to tell crash victims how to obtain an accident report, which in most cases is needed to file an insurance claim. (A state DMV form may also be used in some instances.) Several people interviewed said their responding officer did not tell them how to get a report, creating confusion and delays. But even if victim has the accident report in hand, without information on how to file a claim, the report is useless.

If it bleeds, it leads

Car crash victims, especially those with obvious, bloody wounds, can receive immediate, typically excellent, trauma care in NYC. Yet some victims refuse, or fail to seek, medical aid — because they lack insurance or money, or because they mistakenly think they weren't hurt.

“Your symptoms may be misleading,” warns Dr. Edward Fishkin, medical director of Woodhull Medical Center, a public hospital in Queens. “It’s the way someone was injured, the ‘mechanism of injury’ that matters.” Head injuries are particularly dangerous. But simply breaking a fall with your hand can result in a wrist fracture.

Sometimes, the crash impairs the victim’s judgment. Crash victims typically experience a flood of adrenaline, called an “acute stress reaction,” Fishkin says, which can mask serious pain or injury and makes a person prone to fight, or to flee the scene, out of instinct.

Injuries that seem innocuous at first can have a long-term impact. Jon Hill, 41, found this out the hard way when a cab stopped suddenly and its passenger flung open the door. Hill avoided a collision by jumping off his bike, landing hard on both feet. The passenger ran away, and the driver sped off when Hill began to berate him.

Hill, a Hell's Kitchen resident who works in information technology, got back on his bike, but within a block was in too much pain to stand. He checked into a hospital under his own health policy, and was diagnosed with a sprained ligament. Two years later, Hill says his left ankle has lost range of motion, and his left leg is nearly a quarter-inch shorter than the right, resulting in lower back pain, many thousands of dollars in physical therapy paid by his health insurer, and \$10,000 in out-of-pocket costs.



Jon Hill avoided colliding with a cab door on his bike, but says he sustained a painful, long-term ligament injury.

Victims may also leave the scene without treatment because nonemergency response time for police and ambulance can exceed 30 and even 60 minutes. But it's best to wait. Any injury that is ignored can become "difficult to treat later on," Fishkin advises. And getting a police accident report, written by an officer, is more valuable in court than the self-reported DMV form (the MV-104), according to Adam D. White, a Manhattan attorney.

Yet even the police sometimes encourage the crash victim to walk away. "Francisco," a cyclist who requested anonymity because of pending litigation, says an officer suggested he and the driver "work it out between you." Francisco insisted on getting an accident report. This was fortunate, because his injury — a hairline fracture — wasn't diagnosed until he had surgery much later, after months of pain and lost work.

Like a circle in a spiral

In the United States, insurance benefits are mandated by each state but are settled and paid by private companies. This public-private venture is supposed to ensure market competition and lower costs.

One thing is certain: it creates significant confusion, even for legal experts.

In New York's No-Fault scheme, the "responsible party" (the party who will pay the claim) is typically the driver's insurer. But it may be a state agency, such as disability insurance or workers' comp. In some circumstances, the victim's auto or home insurer might pay. If a victim submits a

claim to the wrong insurer, it will be rejected, and the delay may put them beyond the 30-day deadline for filing.

Because these possibilities are nowhere explained, crash victims who don't know how to proceed may give up. Or they may hire an attorney. Either outcome is contrary to the stated aims of the law: to return crash victims to health as quickly as possible, while reducing costs and lawsuits.

White, the personal injury attorney, points out that insurers may lawfully deny an otherwise valid claim in circumstances where they're not obligated to pay. It's up to the crash victim to find out who is obligated.

Deepening the confusion is the reliance upon auto insurers for settling medical claims related to car crashes. This leaves New Yorkers who do not have car insurance — as noted, the majority of city residents — without an agent (with legally binding duties) to turn to.

The proliferation of insurers, forms and deadlines is confusing for patients and medical providers alike. Joe Herzfeld, a 57-year-old college teacher from the Kensington section of Brooklyn, was sideswiped on his bike by a driver, who stayed on the scene and cooperated with him and the police. Herzfeld was fortunately not injured seriously. But his doctor's office charged his health insurer for his visit, rather than the driver's No-Fault carrier, requiring six months of phone calls to correct. "It was a tremendous nuisance," Herzfeld says.

Fishkin believes that a simplified or single-payer health insurance system, with a single set of forms and authorization process, would make everything easier. "It would probably save money and let us do more with less staff," Fishkin says. In the current system, insurers "play 'gotcha' all time, because the wrong box is checked or because you missed the deadline by 24 hours."



2 Joseph Herzfeld says the injury he received in a car crash, while minor, has never completely healed. Photo by Carol A. Wood.

The kindness of strangers

The information gaps in this system must be filled by the crash victims themselves. Much depends on choices made moments after the crash — when their judgment is likely to be impaired.

For this reason, a quick-thinking witness can make or break a victim's financial — even medical — outcomes.

When Neil Berkson left his Greenwich Village apartment for a 6 a.m. bike ride, Eighth Avenue was nearly empty. But in Midtown, a car ran the light and broadsided him before speeding away. In shock, the retired attorney struggled to get up and away from the scene, his right elbow shattered. A nearby coffee vendor ran to his side and convinced Berkson to wait while he called an ambulance. He stayed to explain what happened to the police and the emergency medical technicians (EMTs).

This coffee vendor did all the right things, according to three ambulance workers interviewed on duty recently in SoHo. Phoning 911 with the exact location is the best thing a witness can do.

Writing down what happened to the victim, or telling the EMTs directly, helps responders treat the injury and may even save the victim's life. (The workers declined to give their names because they were not authorized to speak to the press.)

Some witnesses, however, unwisely try to give medical aid themselves. They may try to make the victim sit up, drink water or move elsewhere. These actions can cause permanent damage, Fishkin warns, if a head or spinal injury is involved. Emergency protocols forbid unnecessarily moving the victim. The NYPD Patrol Guide, for instance, specifies that only a doctor, paramedic or emergency medical technician may give medical aid before an ambulance arrives. Yet the dangers of improper treatment are, like car crash and insurance procedures generally, little publicized or understood.

Kim J., a 50-year-old Manhattan business executive, was luckily spared further injury in such a case. (She asked that her last name not be used to protect her privacy from Google searches.)

Nicked by a red-light-running bus in Midtown, Kim says she landed beneath the bus's bumper, severely bruised and tangled up in her bicycle. Stunned, she felt passersby suddenly lift her to the curb — even though traffic had stopped and she was in no danger. Yet only one witness, an out-of-state tourist, stayed to give police a statement and phone number, which Kim credits with assisting her property damage claim.

Nancy, a petite woman interviewed on a M103 bus who did not give her last name, described being struck by a hit-and-run cab in East Midtown. Though the street was full of people, no one got the license plate number. Nancy spent a week in the hospital for knee and foot surgery, and four years later, remains visibly in pain. She says she has not worked since the crash and used her four-figure settlement to pay her back rent.

In light of these common hazards, state and city authorities should educate the public on providing the right kind of assistance in a car crash. Doing so could improve emergency responses and the accuracy of reporting — or at least ensure that bystanders “do no harm.”

The buck stops here

Ultimately, the crash victim’s fortunes rest on the conduct of the insurer. Some companies deal fairly with claimants, says White, the attorney, while others make a “business model of delay and deny.” Those firms make it so difficult that the claimant walks away — and they make a lot of money that way, he adds.

The crash victim, however, has no way to know these practices in advance. This uncertainty provides another incentive to hire an attorney, to ensure that they receive medical care.

Deborah, for instance, says she had to engage a lawyer to navigate the insurance system during the year following her head injury. The driver’s insurer periodically rejected her medical bills, which her attorney then challenged before benefits were reinstated.

Sarah Phillips feels lucky that she did not lose her life in her crash. But the Toronto native received no advice on how to handle the bills, insurance claims or follow-up treatment for her double fracture. When insurance agents began visiting her at home, she was grateful for the attention at first. A “nurse” told her to take laxatives for the constipation caused by her painkillers.

But the visits came to feel like surveillance. Within three months, the insurer had begun the cycle of denying her treatment claims. Phillips had hired an attorney by then. Her claim for medical treatment became a liability lawsuit that took two years to settle.

When an insurer denies a claim, the injured person can file an appeal with the insurer, lodge a complaint with the state, or, as a last resort, submit a claim to the MVAIC. The state insurance

department wrote in an email that it follows up complaints, and that it performs “market conduct examinations” to ensure insurers’ compliance with the law. The department declined to provide more detailed information on how these examinations ensure compliance. Also unknown are the number of claims that never get made by victims who don’t know they’re available.

No-fault in New York and Massachusetts

“In theory, New York’s No-Fault is a wonderful system. But in practicality, it operates poorly,” says Scott Charnas, the personal injury lawyer, who is licensed in both New York and Massachusetts. He credits New York’s No-Fault system with reducing the number of lawsuits, as intended. He recalled hearing about protracted cases over minor matters, such as neck strain, when he began practicing 30 years ago. “Those cases have been wiped out,” he says.

But in the process, New York’s system has become more inaccessible to people with legitimate claims that don’t fit into its strictures. For instance, if a claim isn’t filed within 30 days, it will be rejected, Charnas says, while in Massachusetts, that 30-day deadline is generally relaxed to within two to three months of the crash. Depending on the extent of injuries and the victim’s personal circumstances, 30 days can pass quickly.

And minor injuries can still be litigated in New York, Charnas adds, as long as they are deemed to be “serious” (a “verbal threshold” that includes fractures, disfigurement, loss of limb and so on). This might be as little as a “fractured pinky finger.” Yet a person whose life-altering injury is not on the list — say a herniated disk that causes extensive pain or reduces mobility — will be denied the right to sue for pain and suffering.

In Massachusetts, by contrast, victims may sue for damages if they have a “serious” injury or if they incur \$2,000 or more in medical bills (a monetary threshold). This permits recovery for a wider variety of injuries. The trade-off is that the maximum No-Fault payoff is \$8,000 in Massachusetts, compared with \$25,000 for New York, where costs and crash severity are arguably higher as well.

Perhaps most instructive for New York is Massachusetts’ standard auto policy, which Charnas cites as exemplary for its step-by-step explanation of what claimants need to do. He believes that New York should require insurance carriers to include a similar list, for both No-Fault and liability claims.

Like New York, Massachusetts's government website includes no instructions on how to file an auto claim. However, a Google search for "how do I file an insurance claim in Massachusetts" quickly turned up instructions from the state Bar Association, through the Massachusetts Trial Court Law Libraries.

Finally, many Massachusetts residents have their own auto insurance and thus insurance agents to turn to for information. Per capita auto ownership ranges from a low of 60 percent in Cambridge to over 100 percent in many other towns. This is comparable to New York State outside of the five boroughs, where per capita ownership among adults is about 88 percent.

A better world is possible

The "major benefit" of New York's No-Fault insurance is that "a number of people without insurance in traffic crashes have been able to get the care that they need," says Steve Vaccaro, a Manhattan tort lawyer with the firm Rankin & Taylor.

"But most people aren't aware of what to do if injured," Vaccaro adds. "It's not written down anywhere." Indeed.

The State of New York could start to fix the situation by creating a clearly marked portal on its insurance website for injured cyclists and pedestrians, and easy-to-follow instructions for filing a claim. The state's Department of Financial Services, and insurance companies, should be required to publicize the programs and how to access them.

New York City, in turn, could make this information abundantly available on its websites. The NYPD, hospitals, and other agencies should refer people to it as well. Printing a Web link on the NYPD and DMV crash report forms — the basis for an insurance claim — would help crash victims immediately.

At a minimum, the city websites should link to existing state Department of Financial Services Web pages, such as they are. Its 311 agents should be given access to clear, brief instructions on how to handle a crash and obtain insurance benefits.

The most effective solution, of course, is for the city to marshal its resources to quickly lower traffic casualties to negligible levels. At present, the DOT's extremely modest target aims to halve traffic fatalities by 2030.

But until someone takes responsibility for informing today's crash victims, their financial and even medical outcomes will continue to rely significantly on luck and the kindness of strangers, adding to total costs, pain, and confusion of the city's 78,000 car crashes per year.

This article was submitted in fulfillment of the requirements for the Degree of Master of Arts in Business Journalism at Baruch College, City University of New York, October 2011. It has been updated with the latest statistics available as of January 2012.

The resources used in writing this article can be viewed on a public interest Web site created by the reporter, www.NycCarAccident.net.

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